

REMARKS

Applicants respectfully request reconsideration of the restriction requirement imposed in this application.

Claims 1-28 are pending in this application and have been subjected to restriction under 35 U.S.C. §§ 121 and 372 because, in the Examiner's opinion, as set forth in the Detailed Action, the application contains claims directed to two patentably distinct inventions as follows:

Group I: claims 1-12, drawn to a probe carrier; and

Group II: claims 13-28, drawn to a method of analyzing a probe carrier.

It is the Examiner's opinion that Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because they lack the same or corresponding special technical features. Specifically, the Examiner finds that Group I includes a probe carrier comprising a nucleic acid probe immobilized on a substrate containing phosphorous, and that Group II does not require the probe of Group I. (see page 2 of the Office Action.)

Applicant's Election Of Invention

As stated above, Applicants provisionally elect Group II, including claims 13-28, for prosecution. Applicants respectfully disagree with the restriction requirement imposed by the Examiner and the characterizations made of the claimed invention. Accordingly, this election is made with traverse.

The Examiner asserts that the inventions of Groups I and II "do not relate to a single general inventive concept" under PCT Rule 13.1. More specifically, the Examiner argues that the inventions of Groups I and II do not share "the same or corresponding special technical features" and thus do not satisfy the requirement of Unity of Invention under PCT Rule 13.2. The Examiner however only points out a particular limitation (i.e., "a probe carrier compris[ing]

a nucleic acid probe immobilized on a substrate containing phosphorous”) which the Examiner contends is not a special technical feature. PCT Rule 13.2 is clear that “[t]he expression ‘special technical features’ shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.” Thus, the Examiner’s assertions that a probe carrier compris[ing] a nucleic acid probe immobilized on a substrate containing phosphorous” is not the special technical feature is irrelevant, whether or not it is correct.

The claims in Group I are directed to a probe carrier having a phosphorous-containing area that contains phosphorous in a predetermined concentration. The claims in Group II are directed to a method of analyzing the probe carrier of Group I. It is respectfully asserted that the technical features that define the contribution of applicants’ invention are common to all of the pending claims. Accordingly, applicants respectfully request withdrawal of the pending restriction requirement.

Applicants respectfully submit that the Requirement for Restriction is improper for at least the reasons stated, and requests that the Restriction Requirement be withdrawn and all presented claims be examined on the merits.

No fees are believed due in connection with this response and this paper is believed to be timely filed. However, should an extension of time be necessary, such extension is hereby petitioned. The Commissioner is authorized to charge any fees or credit any overpayments which may be required for this paper to Deposit Account Number 13-4500, Order No. 1232-5220.

In the event that a telephone conference would facilitate prosecution, the Examiner is invited to contact the undersigned at the number provided.

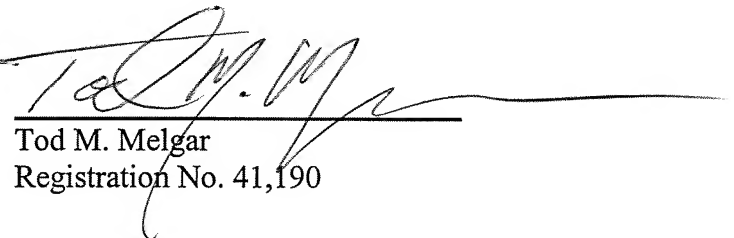
An early and favorable decision on the merits is respectfully requested.

Respectfully submitted,
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